



# BOARD OF REVIEW

- Sunshine Law
- Open Records (UIPA)
- Powers & Limits (State law, Maui County Code, BOR Admin. Rules)
- Ethics
- Contested Cases



# HAWAII'S SUNSHINE LAW



# WHAT IS THE SUNSHINE LAW?

Chapter 92, Part I, Hawaii Revised Statutes

Policy and intent of Sunshine Law is to:

- Open government process to public scrutiny and participation
- Formation and conduct of public policy shall be conducted as openly as possible.

# DOES THE SUNSHINE LAW APPLY TO THE RPT BOARD OF REVIEW?

What is a Sunshine Law Board?

“Board” means any agency, board, commission, authority, or committee of the State or *its political subdivisions* which is created by constitution, *statute*, rule, or executive order, to have supervision, control, *jurisdiction*, or advisory power over *specific matters and which is required to conduct meetings and to take official actions*. HRS § 92-2

# HOW DOES THE SUNSHINE LAW AFFECT THIS BOARD?

1. Adjudicatory function (hearings on appeals) are “contested cases” and are not subject to the Sunshine Law. HRS § 92-6(a)(2).
2. BOR files an agenda pursuant to Sunshine Law.
3. Take testimony on Sunshine Law agenda items (Example: Today’s training is a Sunshine Law agenda item).
4. Keep meeting open to the public.
5. Sunshine Law addresses Board members’ conduct outside of meetings.
6. Rules of thumb: Avoid discussing Board business and appeals outside a Board meeting. Don’t discuss Board business with other members. Call or email staff or your deputy corporation counsel with questions.

# RECENT CHANGES TO THE SUNSHINE LAW

**Applies only to Sunshine Law meetings, does not apply to contested case hearings.**

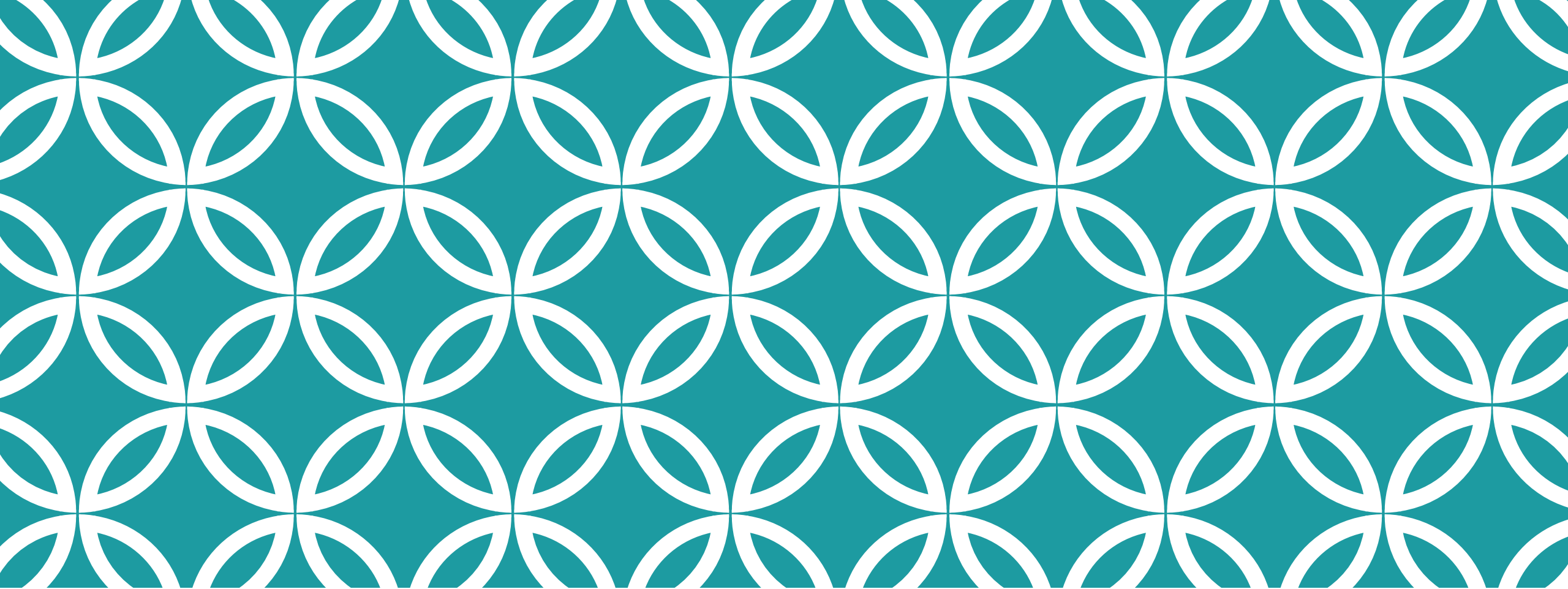
1 primary physical location where the public can testify and watch the meeting.

Board members must state who is present with them at the remote location.

A quorum of members (3) must be visible and audible at all times during the meeting.

Public testimony must not be limited to the beginning of the meeting, i.e., it must be taken before discussion and deliberation of each agenda item.

For virtual meetings, voting must be done by roll call or consensus.



# OPEN RECORDS, THE UNIFORM INFORMATION PRACTICES ACT

Chapter 92F, HRS

# HAWAII'S OPEN RECORDS LAW— HAWAII REVISED STATUTES CHAPTER 92F

1. The Uniform Information Practices Act, Chapter 92F, HRS (“UIPA”) is Hawaii’s public records law.
2. The State Office of Information Practices was created by the Legislature in 1988 to administer the UIPA ([www.oip.Hawaii.gov](http://www.oip.Hawaii.gov))
3. Board documents are subject to public inspection.





# RPT BOARD POWERS & LIMITS

Sources: State law, Maui County  
Code, RPT Administrative Rules

# RPT BOARD'S POWER AND ITS LIMITS

1. Determine questions of fact.
2. Determine questions of law, except involving the Constitution or laws of the United States. HRS § 232-15 and MCC § 3.48.625.B.
3. Decisions must be based on evidence before the Board.
4. Notice of Appeal may be amended any time before the Board's decision, provided it doesn't substantially change the dispute. HRS § 232-15.
5. Allow or disallow exemptions pursuant to law whether or not previously allowed or disallowed by the assessor and to increase or lower any assessment. HRS § 232-7(b); MCC § 3.48.625.B.

# LIMITS

1. Appeal filed on time. HRS § 232-15.
2. Although a general appeal, it ***must bring up all questions of fact and all questions of law***. Questions involving the Constitution or laws of the United States may be presented to the BOR but are decided by Tax Appeal Court. HRS § 232-15; *Kauai Hotel v. County of Kauai*, 82 Haw. 257 (1996).
3. No Board shall have the power to determine or declare an assessment illegal or void. HRS § 232-7(b).
4. Tax records shall be prima facie (assumed to be correct) proof of the assessment, amount due, delinquency, and compliance with all legal requirements. MCC § 3.48.065.
5. Assessment by Director deemed prima facie correct. MCC § 3.48.630.
6. Notice deemed proper when addressed to last known address. MCC § 3.48.055.



# ROBERT'S RULES OF ORDER

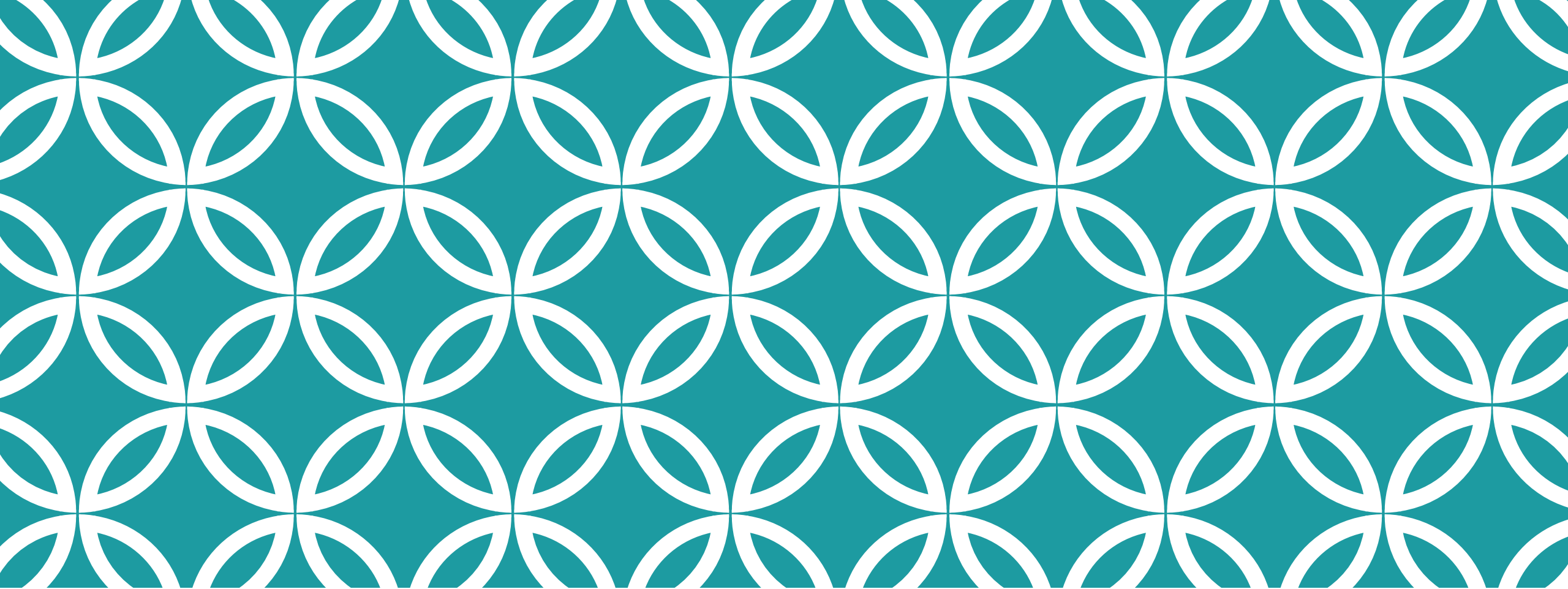
Parliamentary Procedure

# FLOW OF A MEETING

- Chair controls the flow and order of the meeting.
- Members should look to the chair and obtain the chair's permission to speak or debate.
- Flow of a motion: A motion must be made and seconded prior to the motion being received and considered by the board.

# “FRIENDLY” AMENDMENT

1. Once a motion has been made and seconded, it is no longer the property of the mover, but of the Board.
2. If you wish to amend your own motion, you (or any other board member) may do so. The Board should discuss and an amendment may be adopted by vote or unanimous consent.
3. Once an amendment is adopted or defeated, the Board returns to the main motion (as amended or not amended) to discuss and vote.



# MAUI COUNTY'S CODE OF ETHICS

Source: County Charter, Article  
10

# CODE OF ETHICS

Applies to all County Employees, Elected, Appointed Officials, including Board & Commission members.

The Board of Ethics hears allegations of violations of the Code of Ethics and issues advisory opinions whether or not certain conduct is permitted under the Code of Ethics.

Any person may file a complaint and any County officer or employee may request an advisory opinion. Forms are on the County's webpage.

If you feel you have a potential conflict, seek a Board of Ethics opinion.



# MAJOR PROHIBITIONS

1. Solicit or accept gifts (undue influence);
2. Disclose information obtained in your official capacity;
3. Engage in business transactions or activities, or have a financial interest (direct or indirect) incompatible with your duties as a board member;
4. The use of county property and personnel;
5. Fail to disclose a financial interest in any matter which may be affected by Board action, or vote on any matter affected by this interest;
6. Receive private compensation related to your official duties or profit on knowledge not generally available to the public; and

# DISCLOSURE OR USE OF CONFIDENTIAL INFORMATION

(NO. 2)

The Code of Ethics prohibits officers and employees from disclosing confidential information that is acquired in the course of their official duties. The Code also prohibits the use of such confidential information for personal gain or the benefit of others. Charter § 10-4.1.b.

- Under this section of the Code of Ethics, officers and employees should never disclose:
  - Information received during an executive session; and
  - Information which, as a matter of practice is not available to the public.

# RESTRICTIONS ON OUTSIDE BUSINESS ACTIVITIES AND FINANCIAL INTEREST (NO. 3)

No officer or employee of the County shall:

“Engage in any business transaction or activity or have a financial interest, direct or indirect, which is incompatible with the proper discharge of the officer’s or employee’s official duties or which may tend to impair the officer’s or employee’s independence of judgment in the performance of the officer’s or employee’s official duties.”

Charter § 10-4.1.c.

The Code sections dealing with outside business activities and financial interests are reviewed together, since in practice, they are often jointly considered by the Board of Ethics when rendering an opinion.

Charter §§ 10-4.1.c. and 10-4.1.f.

# DISCLOSURE REQUIREMENTS AND VOTING RESTRICTIONS

(NO. 3, CONT'D)

No officer or employee of the County shall:

Fail to disclose a financial interest in any matter which may be affected by an action of a county agency or vote on any matter affected by such interest.

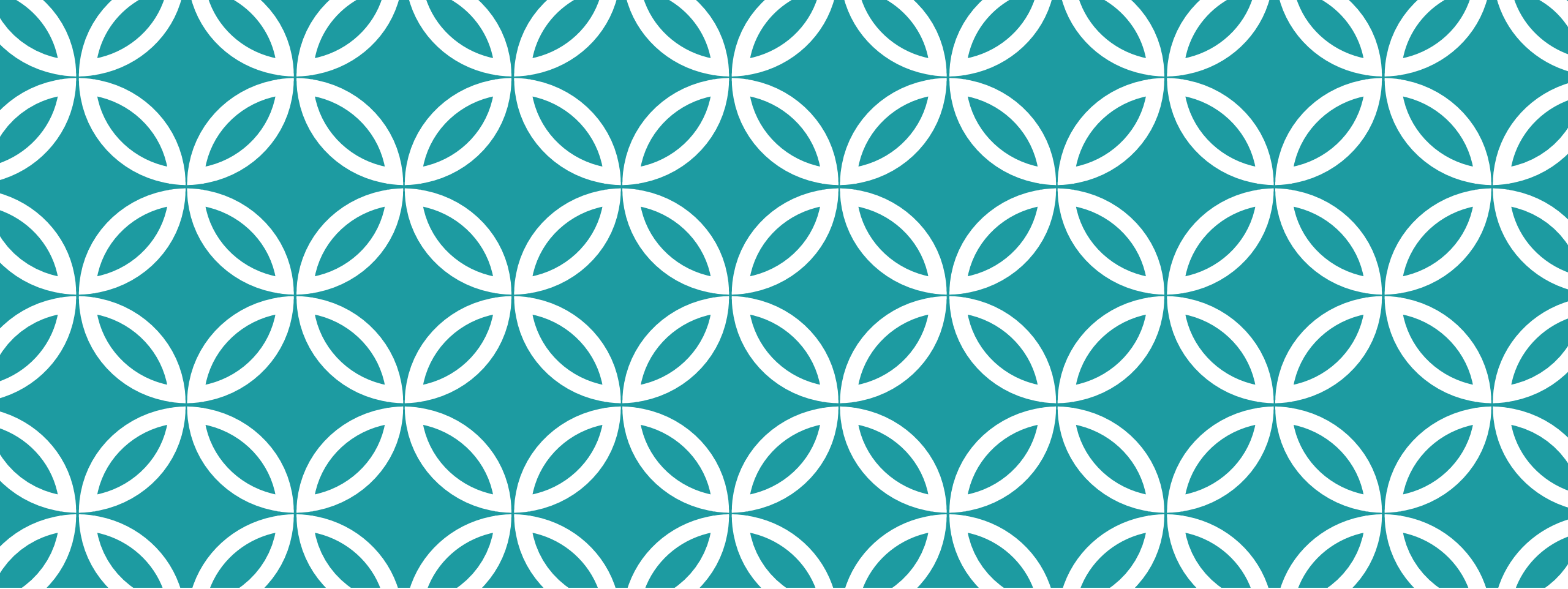
Charter § 10-4.1.e.

# CONFLICT OF INTEREST

“Whenever a conflict of interest or other ethical question is raised regarding a member of the board, the member shall promptly make a full disclosure of the circumstances to the board. When the member is deemed by the board of ethics to have a conflict of interest, that member shall be disqualified from voting in all actions related to such matter.” BOR Rule 5-203-13

If an appeal involves a potential conflict of interest:

1. Disclose the specific conflict of interest (e.g., a tax appeal filed by the company you work for), and
2. Recuse yourself from considering the appeal and abstain from voting.
3. Or, move to defer action on the appeal, seek a Board of Ethics opinion, and act accordingly.



**BOR APPEALS ARE CONTESTED CASES**

# WHAT IS A CONTESTED CASE?

“Contested Case” means a proceeding in which the legal rights, duties, or privileges of specific parties are required by law to be determined after an opportunity for agency hearing.

RPT appeals are contested cases.

The “contested case” portion of your meeting is the Board’s exercise of its adjudicatory powers. Contested case proceedings are not subject to the Sunshine Law.

# CONTESTED CASE REQUIREMENTS

Notice to the parties (Appellant and Division)

Submission of evidence

Cross examination and rebuttal evidence

The party initiating the proceeding shall have the burden of proof, including the burden of producing evidence as well as the burden of persuasion.

The degree or quantum of proof shall be a preponderance of the evidence (“more likely than not”).



# APPEAL FROM BOARD OF REVIEW TO THE STATE TAX APPEAL COURT

- Appeal of this Board's decisions may be made by the taxpayer-appellant or by the County.
- The Tax Appeal Court reviews “de novo” (new) all questions of fact and all questions of law, including Constitutional issues.
- The Tax Appeal Court's jurisdiction is limited to the objections raised before the Board of Review, and any other issues of fact or law that were considered by the Board (81 Haw. 257)
- If unhappy with the Tax Appeal Court's decision, a party may appeal to the Hawaii Supreme Court.



**QUESTIONS?**

